gence of the chauffeur in driving. *McNamara* v. *Leipzig* (App. Div. 1st Dept. 1917) 167 N. Y. Supp. 981.

Whether a general servant of an independent contractor becomes a servant of the contractee *pro hac vice* so as to make the contractee liable for the negligence of the servant is a question of fact and depends on the construction given to the contract. See *Linnehan* v. *Rollins* (1884) 137 Mass. 123; *Standard Oil Co.* v. *Anderson* (1908) 212 U. S. 215, 29 Sup. Ct. 252. The real problem is whether the contract of service is transferred or only the use and benefit of the servant's work. *Cf.* *Moore* v. *Palmer* (1886) 2 T. L. R. 781. In the cases of hired horse-drawn and motor vehicles, authorities are hopelessly conflicting on the question as to what degree of control must be exercised by the contractee over the driver to effect a change of service, but the presumption seems to be that the owner remains the master of the driver 1 Labatt, Master and Servant (2nd ed.) § 54. However, if the servant is wholly under the control of the contractee, he becomes the servant of the contractee. *Cain* v. *Hugh Nawn Contracting Co.* (1909) 202 Mass. 237, 88 N. E. 842; *Philadelphia, etc. Co.* v. *Barrie* (C. C. A. 1910) 179 Fed. 50. Apparently, on the facts of the case at hand, the chauffeur was the servant of the contractee. But see *Shepard* v. *Jacobs* (1910) 204 Mass. 110, 90 N. E. 392. Having once decided that the chauffeur was not a servant of the contractor, it would seem that the contractor cannot be held liable merely because he owned the machine. An automobile is not an agency so dangerous as to render the owner liable irrespective of the relation of master and servant between owner and driver. *Lewis* v. *Amorous* (1907) 3 Ga. App. 50, 59 S. E. 338; *Jones* v. *Hoge* (1907) 47 Wash. 663, 92 Pac. 433, since the dangers incident to its use are the result of the conduct of those in charge of it and do not inhere in the construction and use of the vehicle. See *Steffen* v. *McNaughton* (1910) 142 Wis. 49, 124 N. W. 1016. But, notwithstanding this, the owner is liable for injuries to a third person if he rented the machine to another knowing that it was uncontrollable, as the machine thereby became a dangerous instrumentality. See *Texas Co.* v. *Veloz* (Tex. Civ. App. 1913) 162 S. W. 377.

MONOPOLIES—SHERMAN LAW—"THE RULE OF REASON"—SELLING LOSING BUSINESS.—A corporation, unable to continue its business without loss because of active but legitimate competition on the part of its only competitor, prays for modification of a previous injunction, so as to be permitted to sell out its plant as a going concern to such competitor, rather than to dispose of it as junk. *Held,* the prayer is granted, but an injunction previously in force against the prospective buyer is modified so as to require the buyer to continue to deal fairly with the public. *American Press Association et al.* v. *United States et al.* (7 C. C. A. 1917) 245 Fed. 91.

The above decision amounts to a holding that the courts shall apply "the rule of reason" to a statute which, on its face, purports to brand as illegal "Every contract, combination * * * or conspiracy, in restraint of trade" or as a criminal "Every person who shall monopolize, or attempt to monopolize, or combine or conspire * * * to monopolize any part of the trade or commerce among the several States". Sherman Anti-Trust Law, 26 Stat. 209, c. 647. Here, an act of combination which will result in a complete monopoly is permitted, because, in the opinion of the court, it will not unduly restrain trade; whereas in *Standard Oil Co.* v. *United States* (1910) 221 U. S. 1, 60,

31 Sup. Ct. 502, and *United States* v. *American Tobacco Co.* (1910) 221 U. S. 106, 179, 31 Sup. Ct. 632, where "the rule of reason" was first enunciated, it was entirely unnecessary for the decision of the cases to say that only undue or unreasonable restraint of trade was covered by the statute, for under any theory the combinations were illegal. Such *dicta* may have served a purpose in clearing away apprehension that the courts would interpret the statute literally, as indicated by unfortunate *dicta* in some of the earlier cases, see *United States* v. *Trans-Missouri Freight Ass'n.* (1897) 166 U. S. 290, 312, 17 Sup. Ct. 540, but all the cases previous to the 1910 decisions, in the actual results reached, show that not every contract or combination in restraint of trade was illegal, but that there must have been an element of illegality about such contract or combination as measured by some standard not to be found in the act itself. See *Cincinnati etc. Packet Co.* v. *Bay* (1906) 200 U. S. 179, 26 Sup. Ct. 208; also 23 Harvard Law Rev. 353 for a review of the cases up to 1909. This means that the cases were all decided under "the rule of reason", the courts reaching their conclusions as to what was "reasonable" restraint of trade by the same process as that employed by the common law courts to reach their conclusions when questions of restraint of trade within their jurisdiction are presented. The purpose of the Sherman Anti-Trust Law, as shown by the debates in Congress at the time, was to enable the federal government to handle restraint-of-trade casees because there was no federal common law. See *Standard Oil Co.* v. *United States, supra,* 50. In the principal case, *prima facie,* there is a contract in restraint of trade, because a competitor is eliminated. But, on two theories, the decision can be supported that such restraint is not unreasonable: first, that the competitor will in any event cease doing business, so that buying him out is a merely nominal restraint; second, that any undue restraint which might be caused by the resulting monopoly is to be avoided by the supervision of the court under the injunction. Whether the machinery of the equity court is adequate for proper supervision, over prices if not over methods of maintaining such monopoly, without relying on aid from the Federal Trade Commission, as recently done in *United States* v. *Mead* (not yet reported) 18 Columbia Law Rev. 137, is another question.

MORTGAGES—MERGER—EFFECT OF PURCHASE OF EQUITY OF REDEMPTION BY A MORTGAGEE WHO ASSIGNED SECURED NOTES.—The plaintiff in a foreclosure action was an assignee of notes secured by realty held by the defendant, who had acquired successively the mortgage and the equity of redemption. Further relief in the nature of an order for a temporary injunction restraining waste was asked. The court rejected the defence of merger of legal and equitable interests, and though refusing to grant an injunction gave the plaintiff proper relief. *Stewart* v. *Munger & Bennet* (N. C. 1917) 93 S. E. 927.

When the equity of redemption and the legal estate of the mortgagee meet under the common ownership of the mortgagee, the ordinary result is a merger of the lesser interest into the greater. Jones, Mortgages (7th ed.) § 870; *cf. Pearson* v. *Bailey* (1902) 180 Mass. 229, 62 N. E. 265. But the courts view this operation of merger vigilantly, and have interfered so frequently to prevent it that the rule of merger has been declared to be determined by the intention of the party in whom the interests are united. See *First Nat'l. Bank* v. *Essex* (1882) 84 Ind. 144. This intention is discovered by the circumstances of the particular